

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRUCE KEITHLY AND DONOVAN LEE,
Individually and on Behalf of all Others
Similarly Situated

Plaintiffs,

v.

INTELIUS INC., A Delaware Corporation;
and INTELIUS SALES COMPANY, LLC, A
Nevada Limited Liability Company,

Defendants and
Third Party Plaintiffs,

v.

ADAPTIVE MARKETING, LLC, a Delaware
Limited Liability Company,

Third Party Defendant.

No. C09-1485-RSL

**FINAL JUDGMENT AND ORDER
APPROVING POST-TRANSACTION
SETTLEMENT AND DISMISSING
CLAIMS OF SETTLEMENT CLASS
MEMBERS WITH PREJUDICE**

This matter came before the Court for hearing on November 21, 2013. The Court, having considered the Motions for Preliminary Approval and Final Approval and the declarations in support thereof, the Settlement Agreement (the "Agreement"), any objections or comments received regarding the proposed settlement, the record in the above captioned action (the

1 “Action”), the evidence presented, and the arguments and authorities presented by counsel, and
2 for good cause appearing,

3 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

4 1. The Court, for purposes of this Final Judgment and Order Approving Settlement
5 and Dismissing Claims of Settlement Class Members with Prejudice (“Final Judgment”), adopts
6 the capitalized terms and their definitions set forth in the Agreement.

7 2. The Court has jurisdiction over the subject matter of the Action, the Class
8 Representatives, the Settlement Class Members, and Defendants.

9 3. The Court finds that the notice to the Class of the pendency of the Action and of
10 this settlement constituted the best notice practicable under the circumstances to all Persons
11 within the definition of the Settlement Class, and fully complied with the requirements of due
12 process and of all applicable statutes and laws.

13 4. The Court hereby adopts and approves the Agreement and the settlement terms
14 contained therein and finds that it is in all respects fair, reasonable, adequate, just, and in
15 compliance with all applicable requirements of the United States Constitution (including the Due
16 Process Clause) and all other applicable laws, and in the best interest of the parties and the
17 Settlement Class. Any objections have been considered and are hereby overruled. Accordingly,
18 the Court directs the parties and their counsel to implement and consummate the settlement in
19 accordance with the terms and conditions of all portions of the Agreement.

20 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby
21 finally certifies the Settlement Class, except for the individuals listed in Attachment A hereto,
22 consisting of:

23 All Persons residing in the United States who, at any time from July 2007 to
24 {Insert Preliminary Approval Date} (1) provided credit or debit card information
25 to an Intelius-owned, Intelius-operated, or Intelius-controlled website, and were
26 subsequently charged for services offered through post-transaction marketing by
or for the benefit of Intelius and/or Adaptive Marketing, LLC, and (2) have not
enabled or used any benefit associated with the service.

1 The Settlement Class as certified satisfies all the requirements of Rule 23 and United States
2 Constitution, and any other applicable law as more fully set forth in the Court's Preliminary
3 Approval Order, which is incorporated into this Final Judgment by this reference.

4 6. In certifying this Action as a class action, the Court hereby finds that:

- 5 (a) the members of the Settlement Class are so numerous that joinder of all
6 Settlement Class Members in this Action is impracticable;
- 7 (b) there are questions of law and fact common to the members of the Settlement
8 Class;
- 9 (c) the claims of the Named Plaintiff are typical of the claims or defenses of the
10 Settlement Class;
- 11 (d) the questions of law and fact common to members of the Settlement Class
12 predominate over any questions affecting only individual members of the
13 Settlement Class;
- 14 (e) a class action was and is superior to other available methods for the fair and
15 efficient adjudication of the controversy, considering, inter alia: (i) the interests
16 of members of the Settlement Class in individually controlling the prosecution or
17 defense of separate actions; (ii) the extent and nature of any litigation concerning
18 the controversy already commenced by or against members of the Settlement
19 Class; (iii) the desirability or undesirability of prosecuting the litigation of these
20 claims in this particular forum; and (iv) the difficulties likely to be encountered in
21 the management of the class action; and
- 22 (f) the Named Plaintiff and Class Counsel have fairly and adequately protected the
23 interests of the Settlement Class.
- 24
25
26

SETTLEMENT CONSIDERATION

7. Defendant and Plaintiffs are hereby ordered to comply with the terms and conditions contained in the Settlement Agreement, which is incorporated by reference herein and attached hereto as Attachment B.

8. Plaintiffs, the Settlement Class, and/or Defendant may seek to enforce the provisions of the Settlement Agreement by motion to the Court pursuant to the Court's continuing jurisdiction over the Settlement Agreement as set forth in Paragraph 21 below.

APPLICABILITY

9. The provisions of this Final Judgment are applicable to and binding upon and inure to the benefit of each party to the Action (including each Settlement Class Member and each of Defendant's successors and assigns).

10. All Persons who are included within the definition of the Settlement Class and who did not properly file requests for exclusion are therefore bound by this Final Judgment and by the Settlement Agreement.

11. As of the Effective Date, the Settlement Class members, including Plaintiffs (collectively, the "Releasing Parties"), release Defendant and each of its past, present or future owners, stockholders, shareholders, subsidiaries, affiliates, representatives, directors, officers, employees, agents, assigns, heirs, successors, predecessors, accountants, auditors, consultants, attorneys, insurers and reinsurers, and affiliated and parent corporations, and as the case may be, each of their respective past, present or future owners, stockholders, shareholders, subsidiaries, affiliates, representatives, directors, officers, employees, agents, assigns, heirs, successors, predecessors, accountants, auditors, consultants, attorneys, and insurers and reinsurers (the "Released Parties"), from the "Released Claims." For purposes of this Settlement Agreement, the "Released Claims" are defined as:

- a) All claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal constitution,

1 state or federal statute, rule or regulation, arising out of or related to the enrollment of
 2 a Settlement Class Member alleged, or that could have been alleged as part of the
 3 Claims, in the Complaints filed against Defendant by Plaintiffs' Counsel; and
 4 b) Any unknown claims arising out of or related to the enrollment of a Settlement Class
 5 Member in an Adaptive Marketing or an Adaptive Marketing member program
 6 offered on an Intelius website that the Releasing Parties do not know or suspect to
 7 exist in their favor at the time of this release, which, if known by them, might have
 8 affected their settlement with, and release of, the Released Parties or might have
 9 affected their decision not to object to this settlement. With respect to the Released
 10 Claims, the Releasing Parties stipulate and agree that, upon the Effective Date, the
 11 Releasing Parties shall be deemed to have, and by operation of the entry of the Final
 12 Approval Order and Judgment shall have, expressly waived and relinquished, to the
 13 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of
 14 the California Civil Code, or any other similar provision under federal or state law,
 15 which section provides:

16 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
 17 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**
 18 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
 19 **THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST**
 20 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
 21 **WITH THE DEBTOR.**

22 12. The Releasing Parties may hereafter discover facts in addition to or different from
 23 those they now know or believe to be true with respect to the Released Claims, but upon the
 24 Effective Date, shall be deemed to have, and by operation of the entry of the Final Approval
 25 Order and Judgment shall have, fully, finally, and forever settled and released any and all of the
 26 Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-
 contingent, which now exist, or heretofore have existed, upon and theory of law or equity now
 existing or coming into existence in the future, including, but not limited to, conduct that is

negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

13. As of the Effective Date, by operation of the entry of the Final Approval Order and Judgment, each Settlement Class member who does not file a valid Request for Exclusion, thereby becoming a Settlement Class member, automatically, upon final approval of the Settlement, shall be held to have fully released, waived, relinquished and discharged the Released Parties from the Released Claims, to the fullest extent permitted by law, and shall be enjoined from continuing, instituting or prosecuting any legal proceeding against the Released Parties relating in any way whatsoever to the Released Claims.

14. The Releasing Parties, on behalf of themselves and their respective assigns, agree not to sue or otherwise make a claim against any of the Released Parties that is in any way related to the Released Claims.

15. Attachment A to this Final Judgment contains a list setting forth the name of each Person who timely submitted a request for exclusion from the Settlement Class in compliance with the procedures set forth in the Preliminary Approval Order. The Persons so identified shall not be entitled to benefits from the settlement nor bound by this Final Judgment.

ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

AND CASE CONTRIBUTION AWARDS

16. Defendant shall within fifteen business (15) days after the entry of this Order, deliver to Lead Class Counsel, a check in the amount of \$2,055,200.00 as partial payment of the total of \$3,055,200.00 in Plaintiffs' attorneys' fees, and a check in the amount of \$66,911.30 in expenses and costs. Pursuant to the Settlement Agreement, such funds shall be paid from the Cash Consideration to be paid by Intelius into a common fund for the benefit of the Settlement Class. No later than May 1, 2014, Defendant shall deliver to Lead Class Counsel a check in the amount of \$1,000,000. to pay the remainder of attorney fees.

17. Defendant shall within fifteen business (15) days after entry of this Order, deliver to Lead Class Counsel a check payable to "Donovan Lee" in the amount of \$10,000 as a Case

1 Contribution award. Pursuant to the Settlement Agreement, such funds shall be paid from the
2 Cash Consideration to be paid by Intelius into a common fund for the benefit of the Settlement
3 Class.

4 **GENERAL PROVISIONS**


5 18. The provisions of this Final Judgment are entered as a result of a voluntary
6 agreement of the parties. The Settlement Agreement and this Final Judgment are not intended to,
7 and shall not be construed as any admission, express or implied, of any fault, liability or
8 wrongdoing by Defendant, or of the accuracy of any of the allegations in the Complaint.

9 19. All terms, provisions, obligations and rights as contained in the Settlement
10 Agreement are hereby incorporated into this Final Judgment and the parties are ordered to
11 perform their obligations thereunder, including, but not limited to, the full release of claims. The
12 claims of the Plaintiffs in all actions, complaints and lawsuits against Defendant and/or the
13 Released Parties arising out of or related to the enrollment of any Settlement Class Member in an
14 Adaptive Marketing or an Adaptive Marketing affiliate member program on an Intelius website
15 are hereby dismissed with prejudice and without leave to amend.

16 20. Jurisdiction is retained by this Court for three months following the Effective
17 Date for the purpose of enabling any party to this Final Judgment to apply to the Court at any
18 time for such further orders and directions as may be necessary and appropriate for the
19 construction or carrying out of this Final Judgment and Settlement Agreement, for the
20 modification of any of the provisions hereof, for enforcement of compliance herewith, and for
21 the punishment of violations hereof.

22 **IT IS SO ORDERED.**

23 DATED: November 21, 2013.

24
25 

26 Hon. Robert S. Lasnik
United States District Judge

1 **APPROVED AS TO FORM:**

2
3 **KELLER ROHRBACK L.L.P.**

4 By: /s/ Mark A. Griffin

5 Mark A. Griffin, Esq.

6 Karin B. Swope, Esq.

7 Attorneys for Plaintiffs

8 BRUCE KEITHLY and DONOVAN LEE,

Individually and on Behalf of All Others

Similarly Situated

9
10 **COHEN MILSTEIN SELLERS & TOLL PLLC**

11 By: /s/ Andrew N. Freidman

12 Andrew N. Friedman, Esq.

13 Victoria S. Nugent, Esq.

Attorneys for Plaintiffs

14 BRUCE KEITHLY and DONOVAN LEE,

15 Individually and on Behalf of All Others

Similarly Situated